



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gordon R.A. Fishman--Reconsideration

File: B-257634.4

Date: September 9, 1996

Neil I. Levy, Esq., Kilpatrick & Cody, for the protester.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request neither demonstrates that earlier decision contained errors of fact or law, nor presents new information that would warrant reversal or modification of earlier decision.

DECISION

Gordon R.A. Fishman requests reconsideration of our decision, Gordon R. A. Fishman, B-257634.3, Nov. 9, 1995, 95-2 CPD ¶ 217, in which we denied Fishman's protest against the award of a lease agreement to KD Development under solicitation for offers (SFO) No. GS-05B-15777, issued by the General Services Administration (GSA) for office space for the Internal Revenue Service in Mount Clemens, Michigan. Fishman maintains that we erroneously concluded that GSA had properly found its offer technically unacceptable.

We deny the request.

The SFO is for the lease of approximately 10,250 net usable contiguous square feet of office space. After evaluating offers, engaging in discussions and soliciting best and final offers (BAFO), GSA determined that Fishman's proposal was technically unacceptable for numerous reasons. Chief among the reasons was GSA's conclusion that Fishman had not unequivocally offered 10,250 contiguous square feet of office space; a portion of Fishman's offered space (the second floor of its building) was subject to a preexisting lease with another concern, and the agency found that Fishman had failed to demonstrate in its proposal that this portion of the space could be made available.

In our decision, we agreed with GSA that Fishman's proposal did not unequivocally demonstrate its compliance with the contiguous space requirement, since the record indeed showed that a portion of the offered space was subject to another concern's right to occupy it under the terms of an earlier lease. Although the record also

showed that the tenant had agreed to move, this agreement was contingent upon the tenant's review and approval of a new lease for space elsewhere in the building. We also concluded that the agency properly had found Fishman's offer technically unacceptable (as opposed to finding the firm nonresponsive), and thus was not required to refer the matter to the Small Business Administration under its certificate of competency (COC) program because of Fishman's status as a small business.

In its request for reconsideration, Fishman maintains that we erred in finding that it had not met the contiguous space requirement. According to the protester, the preexisting lease was due to expire within 30 days after GSA awarded the lease to KD Development, and Fishman would not be required to make the space available under the terms of the SFO until 180 days after contract award. Fishman concludes that its offer complied with the contiguous space requirement and thus was technically acceptable.

In order to obtain reconsideration, a requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that would warrant reversal or modification of the earlier decision; repetition of arguments previously made, or disagreement with the prior decision does not meet this standard. Liebig Int'l, Inc.; Defense Logistics Agency--Recon., B-265662.2; B-265662.3, Mar. 28, 1996, 96-1 CPD ¶ 169. Fishman's request provides no basis for our Office to reverse or modify our earlier decision.

Of central importance to our first decision was the fact that the record did not contain a complete copy of the preexisting lease; Fishman's offer had included only the first page of the lease, and Fishman did not tender a complete copy in connection with its protest. (Fishman still has not provided our Office a complete copy of the lease.) Consequently, there was no way for us to determine the rights of Fishman's tenant under that lease (e.g., whether the tenant had a unilateral right to renew the existing lease). Fishman has presented no new information relating to this question. We therefore have no basis to conclude that our decision was erroneous.

Fishman also contends that we erred in determining that its failure to meet the contiguous space requirement was a matter of technical acceptability rather than responsibility. In our decision, we specifically considered and rejected Fishman's contention that this was a matter of responsibility rather than technical acceptability; the contingent nature of the tenant's promise to move rendered Fishman's offer technically unacceptable because it brought into question the firm's promise (made elsewhere in its proposal) to meet the contiguous space requirement, a material requirement of the SFO. Fishman's position on

reconsideration amounts to no more than a restatement of its earlier allegation and disagreement with our conclusion. This, without more, does not form a basis for our Office to reconsider the protest. Id.

The request for reconsideration is denied.

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